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SUPREME COURT, U. S.

No. 73-337

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In the Supreme Court of the United States

OCTOBER TERM, 1973

THE SEVEN-UP COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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This a companion case to *PepsiCo, Inc.* v. *Federal Trade Commission, et al.* (No. 72-1420), *Pepsi-Cola Bottling Company of Corvallis, Inc.* v. *Federal Trade Commission, et al.* (No. 72-1422), and *The Coca-Cola Company, Coca-Cola Bottling Co., et al.* v. *Federal Trade Commission* (No. 72-1504), now pending on petitions for writs of certiorari. The question presented by this case—whether the courts properly refused to enjoin the Federal Trade Commission from conducting an administrative proceeding because of the agency's failure to include as respondents allegedly indispensable parties—is identical to the questions presented in the above petitions. In this case, the Court of Appeals for the Eighth Circuit held, as had the Fifth and Second Circuits in the above cases, that the complaint

was properly dismissed for lack of subject matter jurisdiction.

Our reasons for opposing the granting of this petition are fully set forth in our Memorandum for the Respondents in Opposition in Nos. 72-1420, 72-1422 and 72-1504, to which we respectfully refer this Court.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1973.